

RIGHTS AND
RESPONSIBILITIES OF
**UNMARRIED
PARENTS**



MINNESOTA LEGAL SERVICES COALITION

PREFACE

This booklet provides basic information about the rights and responsibilities of unmarried parents. It is a guide and is not meant to answer all questions. The laws referred to in this booklet may change often, so be sure to check for changes. This booklet only gives general rules, which may or may not apply to your situation.

For legal advice, contact a lawyer. If you have a low income and need legal help, call your legal aid office at 1 (877) 696-6529 or look for help from other programs at <https://www.lawhelpmn.org/providers-and-clinics>.

If you have a low income you can get a free copy of this booklet from your local Legal Services office.

You can also see booklet info

- Online at www.LawHelpMN.org to view or print out.
- Purchase a printed booklet for \$7.48 (which includes applicable sales tax, postage, and handling) by going to www.mnlegalservices.org/orderbooklets

If you have questions about ordering a booklet, email us at statesupport@mnlegalservices.org.

For free information about this and other civil legal topics, visit <https://www.LawHelpMN.org>.

Cover design by Jennifer Wallace, Art Director, Minnesota State Bar Association

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Chapter 1. Learning About Legal Parenthood

This booklet helps you understand your rights and responsibilities as a parent. Your child deserves the best you can offer, including the love, attention, support, and understanding of BOTH parents.

Even if there are disagreements between parents, your child has a right to shared parenting when both parents can provide it. It is best for your child to be taken care of by and have relationships with both parents. Major decisions should be made by both parents so they can both lend their experience and judgment to a situation. Your child does not lose these rights when their parents are not married.

LGBTQ Parents and Paternity

For same-sex and LGBTQ parents, questions can come up about paternity. These situations can be complicated. Minnesota courts have been working on this in the last few years. If this is your situation, talk to a lawyer.

Current laws assume that parents are a mother and a father. Because of that we use that language in this booklet. We know that families and parents don't all fit that pattern. We will update our language as laws change.

So for now, when this booklet says mother, it means the person who gave birth to the child.

What is paternity?



“Paternity” means who is legally the father of the child.

It is taken for granted (presumed) that the mother is the child’s legal parent because she gives birth to the child. When a child is born during a marriage, the husband is presumed to be the father of the child.

If the parents are not married when the child is born, there is no legal father until paternity is established. A birth certificate does not establish paternity.

If the parents agree that a man is the biological father, they can sign a form called a **Recognition of Parentage (ROP)**. Or a court action may be started to name the father (**adjudicate paternity**).

An unmarried mother has sole legal and sole physical custody of the child until a court order says differently.

An unmarried father does not have a right to custody or parenting time until paternity is established. Only a legal parent can ask the court for custody or parenting time. A legal parent is also responsible for supporting a child. Once a man is named the legal father of a child, he has certain rights, duties, and obligations to the child.

Advice from a lawyer is the best way to make sure that your rights are protected.

Why should paternity be established?

Psychological Benefit

Most of the time, there are emotional benefits for a child by having contact with their father. A child may also develop family ties to grandparents, aunts, uncles, and other relatives.

Medical History

Your child may also gain access to medical history and genetic information that may be helpful in current or future medical treatment.

Inheritance

The child has legal rights as an heir to inherit from their father and their father's relatives.

Government Benefits

If the father becomes or is disabled, the child may be able to get benefits from the Social Security Administration or Veteran's Administration. The child can also get death benefits from Social Security or military benefits if the father was a veteran.

Decision-Making About the Child

Unless certain actions are taken to establish the legal relationship, a father has no right to be involved in the child's life. This includes the decision for the child to be adopted.

How is paternity established?

There are 2 ways to establish paternity in Minnesota.

- 1. Recognition of Parentage (ROP)**
- 2. Paternity Adjudication (from the court)**

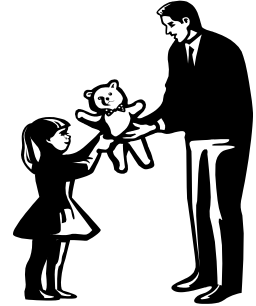
The next two chapters explain ROPs and Paternity Adjudications in more detail. Here are some important things to know about each one.

Recognition of Parentage (ROP)

- Informal – do not have to go to court
- Can be done at any time
- Both parents have to agree. If the woman is married to another man, the husband has to sign a form called a "Spouse's Non-Parentage Statement"
- Is the legal basis for child support but a court action is needed to set child support
- Is the legal basis for father to bring court action for custody or parenting time
- Quick, inexpensive
- No right to free lawyer but you can pay one to talk about your rights

Paternity Adjudication (court order)

- Formal – have to go to court
- Can be done at any time to establish paternity, but there are time limits if you are trying to prove someone is NOT the father
- The parents do NOT need to agree
- Child support is part of the same legal action
- Custody and parenting time are part of the same legal action
- Court actions can take a long time
- If low-income, right to have a free, court appointed lawyer (for paternity issue only)
- If not eligible for free lawyer, can be costly



Who decides what the child’s last name will be?



When parents are not married, the mother chooses the child’s last name. The parents have to agree to keep or change the child’s last name when they sign the ROP.

During a Paternity Adjudication, the court has to make an order about the child’s name. If the parents do not agree, the court decides what name is in the child’s best interest.

Chapter 2. Recognition of Parentage (ROP)

What is the Recognition of Parentage (ROP)?

A Recognition of Parentage (ROP) sets up a legal relationship between the child and the father. A ROP is a form that shows that a man is a child’s legal father.

Quick Facts about a ROP

- A ROP is an agreement recognizing the child’s biological father.
- It is a form signed by both parents, notarized and filed with the MN Department of Health, Office of Vital Records.
- It legally shows paternity when the father is not married to the mother. (If the mother is married, see “What if the mother was married when she was pregnant or when the child was born?” in this chapter.)
- It is an informal process that does not involve going to court.
- It allows the father’s name to be on the birth certificate.

- It creates certain legal rights and responsibilities for the father, mother, and child.

A ROP can be filled out and signed at any time. But it is only valid when it is filed with the Minnesota Department of Health, Office of Vital Records. You do not need a lawyer, but it's a good idea to talk to one before you sign to make sure you understand how it affects your rights.

A ROP is as serious and final as a court order "adjudicating" (establishing) paternity. When signing a ROP, each parent is giving up the right to genetic testing to find out if the man is the child's biological father. The father is giving up his right to a court trial about paternity. Both parents give up their right to a lawyer.

If you are not sure, do not sign this important legal document. By signing the ROP, you are stating under oath that the man is the child's father. If you know this is not true, you are committing perjury (lying on a sworn document).

If either parent is under 18 years old when signing the ROP, then the ROP is only a "presumption of paternity" (taken for granted) if paternity is later challenged in court. See "What is a presumption of paternity?" in Chapter 3.

Where can I find the ROP form?

You can get the ROP form from your child support office or online at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-3159-ENG>. Read the instructions and fill out the form. The form has to be signed in front of a notary.

Does signing the ROP give custody or parenting time rights?

No. The ROP does **not** automatically give the father any **right** to custody or parenting time (visitation). But it does give him the right **to ask** a court for custody or parenting time.



After signing a ROP, the mother continues to have sole legal and sole physical custody of the child. Only a court order can change this.

What if the mother was married when she was pregnant or when the child was born?

If the mother was married when she was pregnant or when the child was born, it is taken for granted that her husband is the child's legal father. This is called a "presumption of paternity." If the husband is not the biological father and he wants to give up his presumption of paternity, he can sign a form called "Spouse's Non-Parentage Statement" and file it with the MN Department of Health.

You can get the Spouse's Non-Parentage Statement and instructions at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-3159C-ENG>. Read the instructions and fill out the form. The form has to be signed in front of a notary.

This form has to be signed within 1 year after the child's birth. Once it is signed and filed, the man that signed the ROP can be the child's legal father. If the Spouse's Non-Parentage Statement is not signed within 1 year, then a court action is necessary to decide the legal father of the child.

I signed a ROP but now I am not sure I should have. Can I cancel it?

Anyone who signed a ROP can cancel it within 60 days. This is called a revocation. A revocation has to be in writing, notarized, and filed with the MN Department of Health, Office of Vital Records. It has to include

- the child's name and date of birth,
- your name, and
- the other parent's name.

The mother or the man who signed the ROP can cancel (revoke) the ROP within 60 days. You can find a revocation form at <https://edocs.dhs.state.mn.us/lfserver/public/DHS-3159B-ENG>. A special form is not required.

After 60 days, only a court can cancel the ROP. The person who signed the ROP, the public authority (the child support office), or the child may bring a court action to "vacate" (cancel) the ROP. The action has to be brought within certain time limits.

- The mother, father, or mother's husband has to bring the action
 - **within 1 year of signing the ROP**
OR
 - **within 6 months of getting genetic test results** that show the man that signed the ROP is not the biological father.
- The child has to bring the action within 6 months of the genetic test results or within 1 year of becoming an adult (by age 19), whichever is later.

The person bringing this action has to show there was fraud, duress (feeling forced or threatened to do something against your will) or material mistake of fact (a mistake about the facts that could not have been known at the time the ROP was signed).

What if we signed a ROP and we AGREE about custody, parenting time and child support?

If both parents agree, there is a process that lets you file your written agreement and a copy of the filed ROP with the court for approval. The written agreement is called a Joint Petition. The Joint Petition has to include your agreements on all issues of custody (legal and physical), parenting time, and child support (basic, medical, and child care). The court has forms you can fill out and file with the court.

- Go to www.mncourts.gov

- Click on “Forms & Instructions” on the menu
- Click on “Child Custody / Parenting Time”
- Click on “[Joint Petition to Establish Custody, Parenting Time, Child Support](#)”

If you need help getting your agreement approved by the court and made into a court order, contact your local legal aid office at 1 (877) 696-6529, the county child support office, or other providers in your area who may be able to help.

Can the court make custody or parenting time decisions in an Order for Protection?

If you signed a ROP and you are now going to court for an Order for Protection (OFP) hearing, the court can make temporary decisions on custody and parenting. The safety of the child and the person asking for the OFP has to be considered by the court.

For permanent decisions on custody and parenting time, either parent can start a custody action in court.

If I signed a ROP, can I be on my child’s birth certificate?

When the parents sign the ROP in the hospital, the father’s name is automatically on the birth certificate. If you sign the ROP after leaving the hospital, the father’s name can be added to the birth certificate.

You can add the father’s name through the MN Department of Health, Office of Vital Records. There is no fee to update the child’s record.

For more information, call the Office of Vital Records at 651-201-5970 or visit the MN Department of Health’s website at <https://www.health.state.mn.us/people/vitalrecords/rop.html>.

Chapter 3. Paternity Adjudication

What is Paternity Adjudication and why is it important?

A Paternity Adjudication is a court order that says who the child’s legal father is. It sets up a legal relationship between the child and the father. It is the way (other than a ROP) to establish paternity.

A paternity adjudication may be necessary if

- a parent does not want to sign the ROP
- OR
- more than one man claims to be the father
- OR



- the mother was married to someone other than the biological father when the child was born.

The court looks at the evidence to decide who is the child's legal father. This includes genetic testing and the past relationship between the mother and the possible father. You can ask for a genetic test, but you do not HAVE to have one to establish paternity.

The paternity order should also decide custody, parenting time, child support, and the child's legal name.

Who can bring a paternity action to court?

These people can bring a paternity action

1. the child's mother
2. a man alleged or presumed to be the child's father
3. the county child support office
4. the child (by an adult on their behalf)
5. a child's grandparent if the grandparent's child (the mother or father of the child) is dead or is a minor.

What is a presumption of paternity?

A presumption of paternity points to the likely father of the child. **It does not establish paternity.** Some examples of when a man is presumed to be the biological father are

- He and the mother were married when the child was born, or the child was born within 280 days after the marriage was over.
- He receives the child into his home and openly "holds the child out" to be his biological child. This means the father accepts the child and acknowledges the child as his biological child.
- Genetic test results say that he is the father at a 99% or greater probability.
- He and the mother of the child signed a ROP, but the mother and another man also signed a ROP.
- He and the mother of the child signed a ROP, but another man is also a presumed father.
- He and the mother of the child signed a ROP, but one of the parents is under age 18.

If you have a question about how presumptions of paternity might apply to your situation, you should **talk to a lawyer**. This can be a complicated area of law to understand.

Can a paternity action decide that someone is NOT the father?

Yes, the court can make an order saying that a man is NOT the legal father of a child.

There are time limits to do this. **Act fast!** In some cases, a person has 2 years to bring an action after they have reason to believe a man is not the child’s father. In other situations, a person only has 6 months to bring a court action after genetic tests show a presumed father is not the child’s biological father.

If a presumed father wants the court to declare he is not the legal father, the court action has to be started before the child is 3 years old. But this time limit does not apply in all cases.

Contact your legal aid office or talk to a lawyer if you have a question about when to bring a court action to declare a man is not a child’s legal father.



What are the steps in a Paternity Adjudication?

To start a paternity action, contact the MN Statewide Self-Help Center at 651-435-6535 or through their website (<https://mncourts.gov/help-topics/self-help-centers/self-help-centers-contact>) and ask for paternity forms. They will email you the forms you need and instructions to help fill out the forms.

If you want help starting a paternity action, contact your county child support office. The office is also called the IV-D Unit (“Four D Unit”). The county’s goal is to establish paternity for all children and to help set up child support. You can [find your IV-D Unit](https://dcyf.mn.gov/individuals-and-families/family-services/child-support) at <https://dcyf.mn.gov/individuals-and-families/family-services/child-support>. For more information, see “How can I get help to establish child support?” in Chapter 4.

Here are the steps for a paternity action.

STEP 1: Fill out the legal papers.

STEP 2: Serve the legal papers on the other party.

STEP 3: File the legal papers with the court.

STEP 4: Go to your hearing.

If the parents can’t agree, the court schedules a hearing or trial to decide the issues. All hearings or trials in a paternity action are held in closed court. That means only people necessary to the case can attend the hearings.

Either parent has the right to ask for genetic testing. Parents can always come to an agreement at any time during the paternity action.

The court looks at the evidence to decide who the child’s legal father is. The court decides paternity and issues an order naming the child’s legal father (Paternity Adjudication). The order also decides custody, parenting time, child support, and the child’s legal name.

Can I have a lawyer represent me? What if I can't afford a lawyer?

In any legal matter, you can always hire a lawyer to represent you or give you legal advice.

In a paternity case, you have the right to have a free, court-appointed lawyer if you are low-income. But the lawyer is **only** appointed to help with paternity. They don't represent you for the custody, parenting time, or child support parts of the case. Contact your local legal aid office at 1 (877) 696-6529 for advice and help with the custody, parenting time, or child support parts of the case.

There is no right to a free lawyer if the parents have signed a ROP. You can still choose to consult with a lawyer, but you have to pay for the lawyer yourself. If a ROP is signed, contact your local legal aid office at 1 (877) 696-6529 for advice and help. You may be able to get help for free.

Genetic Tests

Blood tests and cheek swab tests are 2 types of genetic tests done to determine paternity. Some areas still use blood tests, but many are now using cheek swab tests. Genetic tests are highly reliable and accepted by the courts.

Either parent may ask for genetic testing even before they start a court case.

Often genetic tests are the most objective and influential evidence in a paternity case. The courts favor using genetic tests because they are the most accurate and efficient way to determine paternity.

Once the court makes its final order, or after the ROP is signed, the right to a genetic test goes away. If you are unsure about paternity, ask for genetic testing before signing a ROP, or as part of a court action. The county child support office assists with genetic testing before a ROP is signed or during a court action.



Chapter 4. Financially Supporting Your Child

Child Support

Child support is the money a parent pays to help support a child that does not primarily (mainly) live with them. Every child has a right to be supported by both parents.

The parent paying child support is called the "obligor." The parent getting child support is called the "obligee." The amount of child support the obligor pays depends on both parents' incomes and the amount of time they spend with the child. The more overnights the obligor has with the child, the less support they pay.



If each parent has the child about the same amount of time and their incomes are equal, neither parent pays child support. If the parents' incomes are not equal, the parent with the higher income may have to pay the other some child support.

Child support has 3 parts. They are

- Basic support – Part of the child's expenses like food, clothing, housing and transportation
- Medical support – Part of health insurance and other medical/dental costs for the child
- Child care support – Part of the child care costs when the parents work or go to school

The child support order can be part of the paternity action or a separate court case for child support if a ROP was signed. It can cover up to 2 years before the court case was started.

The court uses the same legal standards for deciding basic support, medical support, and child care support no matter if support is decided in a paternity action, a separate action for child support, or in a divorce case. The amount of support is calculated based on the Minnesota Child Support Guidelines.

The obligor has to pay child support even if there is no parenting time or if the other parent is denying parenting time. For more information on child support, see the "[Child Support Basics](https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics)" booklet at <https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics>.

A parent can't avoid paying child support just because they were under 18 at the time the child was born.

If you know how much money the other parent makes you can get an idea of how much child support a court might order by using Minnesota's online child support calculator at <https://childsupportcalculator.dhs.state.mn.us/>

Read the instructions. They will tell you how to use it and what information you need. The more information you can fill in, the more right it is. It can be confusing but might give you an idea of what to expect in court.

Medical Support



Each parent is also responsible for part of their child's medical and dental expenses. This amount is based on their income. Medical support is ordered by the court to help pay for the child's medical and dental insurance premiums. It also includes doctor office co-pays or other medical or dental expenses not covered by insurance.

Whenever a court makes a decision about child support, it has to also decide medical support. If the child gets Medical Assistance or MinnesotaCare, the court order also includes reimbursement to the county for this public assistance.

See the booklet "[Child Support Basics](https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics)" for more information about medical support at <https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics>.

Child Care Support

If a parent pays for child care so they can work or go to school, the other parent may have to pay a share of these child care costs.

If the county helps with child care costs, the child care support is paid to the state, not the other parent.

See booklet [“Child Support Basics”](https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics) for more information about childcare support: at <https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics>.



How can I get help to establish child support?

Each county has a child support office. The office is also called the IV-D Unit (“Four D Unit”). The IV-D Unit has to help you get child support. You can [find your IV-D Unit](https://dcyf.mn.gov/individuals-and-families/family-services/child-support) at <https://dcyf.mn.gov/individuals-and-families/family-services/child-support>

- If you **are getting MFIP**, you don’t need to apply for help from the IV-D Unit. MFIP sends your case to the IV-D Unit. You have to give some information to the IV-D Unit, unless there is family violence.
- If you **are not on MFIP**, you have to apply for help. You have to fill out an application and pay a \$35 application fee. Then the IV-D Unit works on your case.

The county attorney represents the county child support office, not either of the parents. The county’s goal is to establish paternity (by Recognition of Parentage or by court action) for all children and to help set up child support. The county can’t help you with custody or parenting time issues. Contact your local legal aid office at 1 (877) 696-6529 for help with custody and parenting time.

If you believe you or your child could be harmed by starting a paternity or child support case, you do not have to apply for services or can stop an action already started. If you get public assistance, you can apply for a “good cause” exemption, and you will not have to cooperate with the child support office. Tell your worker about domestic violence (threats, fears, or harm) and ask for a “good cause” exemption.

How do a ROP, legal custody, and parenting time affect child support?

ROPs and Child Support

A ROP by itself does not set child support. But if you have a ROP you can use it to go to court to get child support.

If both parents **agree** about custody, parenting time, and child support, there is a process that lets you file your written agreement and a copy of the certified ROP with the court for approval. See “What if we signed a ROP and we AGREE about custody, parenting time and child support” in Chapter 2 for more information.

Legal Custody and Child Support

Legal custody does **not** affect child support in any way. The amount of child support ordered is the same, whether the parents share joint legal custody or one parent has sole legal custody.

Parenting Time and Child Support

Parenting time **does** affect the amount of child support. The more overnights the obligor has with the child, the less basic support they pay. See the booklet [“Child Support Basics”](https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics) for more information about child support and parenting time: <https://www.lawhelpmn.org/self-help-library/booklet/child-support-basics>.

If I have a ROP, can the Child Support Magistrate make custody decisions at my child support hearing?

No. Minnesota has a special way to handle child support. It is called the “expedited child support process.” The expedited process for child support is handled by a “Child Support Magistrate.” A magistrate can’t make any decisions about custody or parenting time.

In some counties, if the parents agree on custody and parenting time, the Child Support Magistrate can put those agreements in a court order. But if parents do not agree on custody and parenting time, the father has to start a case in district court to get custody and parenting time.

Can I get public benefits to help support a child living with me?

Yes. A parent or other relative that has a child living with them may apply for and get public assistance without needing a custody order. An income eligible parent that has a child living with them may apply for and get MFIP (the Minnesota Family Investment Program), Medical Assistance, and childcare assistance.

What about tax deductions?

IRS rules say the parent that the child lives with more than 50% of the time may claim the child as a dependent for their tax returns. That parent can sign a form giving the right to claim the child to the other parent. This is called an exemption. The IRS (and State) tax rules apply.

In a child support case, the court can look at the financial situation and order one parent to take the tax deduction. Or the court can order the parents to share the tax deduction by swapping years they can claim the child on their tax returns.



Child Tax Credit

In 2021, the law was changed to temporarily expand access to child tax credits. Parents who were previously unable to claim tax credits for their children due to the child’s age or their household income,

may now be able to do so. The maximum amount a parent may receive in credit was also increased. Tax law and credits are unpredictable and can change based on changes in federal laws. For more specific guidance on tax issues, parents should visit the IRS website (www.irs.gov) or consult with a tax professional.

Chapter 5. Custody and Parenting Time

When are custody and parenting time decided?

In a paternity action, after the court says who the child's legal father is (Paternity Adjudication) the court addresses custody, parenting time, and child support.

If you have a ROP, you can ask the court to decide custody and parenting time. The court has forms you can fill out and file with the court

- Go to www.mncourts.gov
- Click on "Forms & Instructions" on the menu
- Click on "Child Custody / Parenting Time"
 - If you and the other parent **agree on everything**, click on "[Joint Petition to Establish Custody, Parenting Time, Child Support](#)"
 - If you and the other parent **don't agree** on everything, click on "[Request to Establish Custody and Parenting Time](#)"

What is custody?

There are 2 parts to custody

1. Legal Custody
2. Physical Custody

Legal Custody

Legal custody could be called "decision-making custody." This custody involves the right of a parent to make major decisions about the child's life, such as

- where the child attends school
- religion
- major health care

The court can give legal custody to one parent or to both parents together.

Joint legal custody means both parents have equal rights and duties in making major decisions. They need to agree when major decisions need to be made. The court prefers that parents have joint legal custody, unless the parents can't work together to make decisions or there has been domestic abuse.

Courts in Minnesota expect that parents who have joint legal custody work together when it comes to major decisions like choosing a school or enrolling a child in therapy.

Sole legal custody means one parent makes the major decisions.

Whether legal custody is sole or joint, both parents have the right to be informed about the child's schooling, health care, and other major decisions. Both parents can attend school conferences, attend medical appointments, and have reasonable telephone contact with the child.

Physical Custody

Physical custody means living with the child and making day-to-day decisions about the child's care.



Joint physical custody means the child lives with both parents and shares time between the parents. Joint physical custody does not mean the parents have equal time with the child. The schedule doesn't have to be equal for physical custody to be joint. Parenting time is what controls how much time the child spends with each parent.

Sole physical custody means that the child lives primarily (mainly) with one parent.

How does the court decide custody if the parents don't agree?

If the parents don't agree on custody, the court has to decide. The court looks at the following 12 factors to decide what is in the **best interests of the child**. The 12 factors are

1. The child's physical, emotional, cultural, spiritual, and other needs. How do the parents' plans for the child affect these needs and the child's development?
2. Does the child have any special medical, mental health, developmental disability, or educational issues that need special parenting arrangements or access to services?
3. What does the child want? The child's wishes may influence the court if the court decides the child is able, old enough, and mature enough to make a choice.

Note: Your child won't be able to testify at the trial. Be very careful how you talk about the court case with your child. It is very damaging for kids to get caught in the middle of their parents' fights. In some cases, a professional chosen by the court meets with your child to talk to them about their wishes.

4. Has domestic abuse happened in either parents' household or relationships? What are the details of what happened, and does it affect parenting or the child's safety or needs?
5. Does a parent have physical, mental, or chemical health issues that affect the child's safety or developmental needs?

6. How has each parent provided care for the child in the past? Has the child's access to a parent been limited or restricted?
7. The willingness and ability of each parent to keep caring for the child. How does each parent meet the child's developmental, emotional, spiritual, and cultural needs? Can the parent be consistent and follow through with parenting time?
8. Will changes to home, school, and the community affect the child's well-being and development?
9. The relationships of the child with each parent, siblings, and anyone else who is important to the child. Do the proposed custody plans affect these relationships?
10. It is usually better for the child to spend as much time as possible with both parents. The court looks at this and looks at if spending less time with one parent might harm the child in some way.
11. Will each parent help the child have contact often and regularly with the other parent? (except when there is family violence – see #4)
12. The willingness and ability of parents to cooperate in raising their child. Can the parents share information? Can they keep the child away from their conflicts? Do they have good ways to resolve arguments over big decisions about the child?



The court has to write findings (reasons why they are deciding a certain way) on all of these factors. The court has to say how it decided what is in the best interests of the child. The court has to look at all the factors to make their decision, not just one. The court does not prefer one parent over another based on their gender or based on whether or not the parties were ever married.

Can custody be changed after the court has made its order?

Yes. The court can change custody if the situation of the child or parent changes, and a new order is needed for the best interests of the child. **The court only looks at facts that have changed since the old order or facts that were unknown at the time of the old order.** The court can only change custody when

- Both parents agree to the change OR
- The parent with custody has let the child become integrated into (fully part of) the home of the other parent OR
- The child's current home is a danger to their physical or emotional health, or growth, and changing custody does less harm than staying in an unsafe home OR
- The primary custodial parent asked the court to move with the child to another state and the court said no – but the parent moved anyway.

To change a custody order, the parent has to bring a motion in court. The parent has to have witnesses, affidavits or other documents to show one of the above reasons to change custody.

Note: A parent has to wait 1 year from the time custody is first decided before they can ask for changes. If there was a motion to modify, a parent has to wait 2 years from the time the motion is decided before they can ask for changes. It doesn't matter if the motion to modify was granted or not.

BUT these time limits do not apply if

1. A parent has again and again, and on purpose, kept the other parent from seeing the child, OR
2. The child's present home is a danger to them

How is parenting time decided?

When parents are separated, the court usually wants both parents to be involved with their child. Parenting time is the time that each parent spends with a child. It does not matter who has custody or what kind of custody. Parenting time is the same as visitation.

Parenting time has to be set by the court if the court is dealing with custody. If the child lives primarily (mainly) with one parent, the other parent (also called the "non-custodial parent") can be awarded parenting time. The court can also set a parenting time schedule when parents have joint custody. Parenting time has to be in the child's best interest. To set parenting time, the court looks at factors such as the child's age, the child's safety, and the child's past relationship with the non-custodial parent. There are 12 best interest factors the court has to consider. See the earlier section "How does the court decide custody if the parents don't agree?" in this chapter.

In general, a non-custodial parent gets at least 25% of the parenting time. This is calculated by counting the number of overnights in a 2-week period. For example, 25% equals about every other weekend and one overnight a week.

Parenting Time Schedules

If the parents can't agree on a schedule, the court sets a parenting time schedule. The court considers

- the age of the child
- how far apart the parents live
- school schedule
- after school activities
- school breaks
- holidays
- vacation time



Sometimes, a court will "reserve" parenting time, which means the court is not addressing that issue in the order now because it does not have enough information. If parenting time is reserved by the court, the court uses the best interest factors to set a parenting time schedule later.

Parents can always agree to change parenting time by being flexible. For example, either parent can ask the other parent to skip a day or make it up another time or swap days. But if the parents don't agree on the changes, they have to follow the parenting time schedule in the court order.

Restricted or Supervised Parenting Time

The court can limit parenting time for the non-custodial parent to less than 25% if that time is likely to harm the child's physical or emotional health or emotional growth or safety. The court can also limit parenting time if either parent breaks the court's order on parenting time without a good reason.

The court can limit parenting by

- Not allowing overnight visits.
- Ruling it has to be **supervised** by the other parent, a supervised visitation center or a third party, like a relative or close family friend.

The court can also put **conditions** on parenting time, like making the non-custodial parent be sober for a certain period before and during parenting time. The court can order drug or alcohol treatment.

If a parent asking for parenting time has been convicted of certain crimes, that parent has to prove that parenting time with the child is in the child's best interest. These crimes include

- murder, manslaughter
- assault
- kidnapping
- depriving someone else of custodial or parental rights
- soliciting, inducing or promoting prostitution involving a minor
- criminal sexual conduct
- incest
- malicious punishment of a child
- neglect
- terroristic threats
- domestic assault by strangulation

This rule applies only to certain degrees of some crimes and only in certain circumstances, like if the victim of the crime was a household or family member or if the conviction happened in the past 5 years.



Additional Parenting Time to Provide Child Care

The court may give more parenting time to one parent to care for the child while the other parent works. This kind of plan has to be fair and in the best interest of the child. If you ask for this, the court looks at

- How well the parents cooperate
- How well the parents work together on parenting time issues
- If there has been domestic violence between the parents

Courts can't lower child support payments because they order this kind of child care.

Parenting Time Expeditor

The court may appoint a parenting time "expeditor." This is someone who helps parents when they have a disagreement about parenting time. Expeditors may not be available in all counties. The expeditor listens to both sides of a disagreement and decides.

Sometimes the court orders that the expeditor's decision is "binding" (has to be followed) unless one side goes to court and the court changes it. Sometimes the decision is "non-binding" and does not have to be followed unless the court orders that it be followed.

The court can't require parents to use a parenting time expeditor if either parent claims to be a victim of abuse.

The parents have to pay for a parenting time expeditor. The court decides how much each parent pays before appointing the expeditor. If a parent can't afford to pay the expeditor's fees, the court can't require parents to use a parenting time expeditor.

"Guardian Ad Litem" (GAL)

A guardian is a person who acts to protect or help someone. "Ad litem" means "for the lawsuit." In some cases the court may appoint a guardian ad litem to investigate and stand for the child's best interests. Guardians ad litem are not appointed in most paternity or custody actions. When the court is making decisions about custody, a guardian ad litem has to be appointed if the court thinks the child has been abused or neglected.

Guardians ad litem tell the court what is best for the child in things like custody and parenting time. They do an independent investigation. They talk to the child, the parents and other caregivers. They can talk in private to counselors, teachers, family members and friends, and court services and child protection workers.

They write a report to the court saying what they think the court should order. The court does not **have** to do what the guardian ad litem says but takes the report very seriously.



It is important to cooperate with the guardian ad litem. Their report can help or hurt your case.

Guardians ad litem may work for free or for a fee. If there is a fee, the court says who has to pay it. If you get MFIP or other public assistance, if you have a legal aid lawyer, or if you have a low income, you may get a reduced fee or you may not have to pay at all.

If either parent is a minor, the court appoints a guardian ad litem for that minor parent. In this situation the court usually appoints a relative like the parent of the minor parent.

Moving Out of State

If a custodial parent (who the child mainly lives with) wants to move out of state and there is an order giving the noncustodial parent parenting time, they have to get permission from the other parent. The permission has to be in writing. If they leave without permission, it is a crime and they could lose custody. If the other parent does not agree to the move, the parents have to go to court.

The custodial parent has to show the court that the move is in the child's best interests unless the custodial parent was a victim of domestic abuse by the other parent. The court looks at several things, like parenting time agreements, the emotional needs of the child, and if the move is a plan to keep the other parent from seeing the child. Then the court decides if the custodial parent and child can move.

Can we change the parenting time order?

Yes. Parents can always agree to change parenting time. But if the parents don't agree on the changes, a parent has to bring a motion to court to change the court's order. A parent can ask the court to change the parenting time schedule if it is best for the child. The court can look at any changes since the last order and see if a new order is needed for the child's best interest.



Voluntary Parenting Plans

Parents can agree to use a "Parenting Plan" but it is voluntary. Parents do not have to have a Parenting Plan. You and the other parent decide if you want to make a Parenting Plan.

A Parenting Plan takes the place of custody and parenting time orders. The parents write a plan that states the time each parent spends with the child and how they are going to make decisions about the child. If the parents decide to use one, the court has to approve this plan and make sure it is in the best interest of the child. (See the 12 Best Interest Factors in "How does the court decide custody if the parents don't agree?" earlier in this chapter.)

The Parenting Plan has to have

- A schedule of the time each parent spends with the child AND
- Who makes certain decisions about the child AND
- A way to settle arguments

A Parenting Plan can be as detailed as you want. A Parenting Plan often has more details than a typical parenting time schedule. For example, you can make specific communication plans or goals for parenting. Your plan can explain the amount of phone and email contact with the child or the child's participation in activities such as sports and music.

The Parenting Plan may use words other than “physical” and “legal custody.” But it has to clearly say if the parents have joint legal custody or joint physical custody or which parent has sole legal custody or sole physical custody.

If there has been domestic abuse by one parent against the other parent or the child, talk to an attorney. Parents can still agree to create a Parenting Plan or follow one ordered by the court.

Minnesota Father’s Adoption Registry

The Minnesota Fathers’ Adoption Registry is a way for fathers to find out if a petition to adopt their child is filed in the State of Minnesota.

In Minnesota when an unmarried mother wants to place a child up for adoption, she doesn’t have to name the person she thinks is the father before an adoption can take place. If the biological father is not legally recognized (by ROP or Paternity Adjudication) he might not even find out about the adoption.

If the father is properly registered with the Minnesota Fathers’ Adoption Registry, then he has to be notified of an adoption case for the child. If an adoption case begins for a child, and the father has placed his name on the registry, the court finds the father so he can participate in the adoption case.

There are time limits for registering. The father has to register during the mother’s pregnancy or within 30 days of the child’s birth. The instructions and registration form can be found at <https://www.health.state.mn.us/people/vitalrecords/registry/docs/mfarregformac.pdf>.

For more information about the adoption registry go to the MN Department of Health’s website at <https://www.health.state.mn.us/people/vitalrecords/registry/index.html>



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